

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

MANDOLA MANAGEMENT, INC.

V.

PHILADELPHIA INDEMNITY  
INSURANCE COMPANY

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CAUSE NO. 1:11-cv-00478-LY

**PLAINTIFF MANDOLA MANAGEMENT, INC.'S RESPONSE  
TO PIIC'S MOTION TO JOIN DAMIAN MANDOLA, TRINA MANDOLA,  
AND TRATTORIA LISINA, L.L.C. AS NECESSARY AND INDISPENSABLE  
PARTIES TO DEFENDANT'S COUNTERCLAIM PURSUANT TO RULE 19  
OF THE FEDERAL RULES OF CIVIL PROCEDURE**

Mandola Management, Inc. ("MMI") submits this its Response to Philadelphia Indemnity Insurance Company's Motion to Join Damian Mandola, Trina Mandola (collectively, the "Mandolas"), and Trattoria Lisina, L.L.C. ("Trattoria") as Necessary and Indispensable Parties to Defendant's Counterclaim Pursuant to Rule 19 of the Federal Rules of Civil Procedure:

1. Philadelphia Indemnity Insurance Company ("PIIC") argues that the Mandolas and Trattoria should be joined as necessary and indispensable parties because the Mandolas and Trattoria also (in addition to MMI) are assignees from DuchMandola, Ltd., of the claims that MMI prosecutes against PIIC in this suit.

2. F.R.C.P. 19 does not require joinder of every possible party who has claims against the same defendant arising from the same transaction or occurrence, and that joinder is within the discretion of the court, balancing the equities. *Wilson v. Bruks-Klockner, Inc.*, 602 F3d 363, 367 (5<sup>th</sup> Cir. 2010).

3. There is no risk of PIIC incurring "double, multiple, or otherwise inconsistent obligations" because:

a) If MMI is unsuccessful in the prosecution of its claims against PIIC in this suit, *res judicata* will bar the Mandolas and Trattoria from prosecuting the same claims against PIIC; and

b) If MMI is successful in this suit, the doctrine of “single satisfaction” or “one recovery” will bar the Mandolas and Trattoria from recovery again on the same claim, because DuchMandola, Ltd., assigned one claim and one potential recovery; if MMI is successful on that one claim and one recovery, other related parties cannot prosecute and recover on the same claim. *RSR Corporation v. International Insurance Company*, 621 F.3d 851, 862 (5<sup>th</sup> Cir. 2010).

4. The Mandolas and Trattoria have assigned to MMI their interests in the claim against PIIC assigned to them by DuchMandola, Ltd., which are asserted herein by MMI, and represent, agree, and stipulate that whatever the outcome of this suit they will not prosecute the same claims against PIIC. It is suggested that PIIC’s true motive in attempting to join the Mandolas and Trattoria is to include the Mandolas and Trattoria in PIIC’s counterclaims for attorney’s fees and thereby to increase Plaintiff’s costs and exposure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 14 day of November, 2011, I electronically filed the foregoing document with the United States District Court for the Western District of Texas through its Case Management/Electronic Case Files system and thereby upon all parties of record.

  
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Brian W. Bishop